



STUDY IDENTIFIES DWI ENFORCEMENT LOOPHOLES

Many people who drive with BACs (blood alcohol concentrations) above the legal limit go either undetected or unpunished. The National Highway Traffic Safety Administration (NHTSA) sponsored a study to identify *loopholes* in the DWI enforcement system -- to identify where and how these individuals slip through the cracks in the criminal justice system -- and to recommend potential solutions to close those loopholes.

Mid-America Research Institute of Winchester, Massachusetts talked to law enforcement officers and prosecutors from several places across the country to get an overview of current BAC law enforcement methods and problems. Next they conducted case studies in three jurisdictions -- Scottsdale, Arizona, Rockdale County, Georgia, and Palm Beach County, Florida--to document various enforcement strategies, and to see, first-hand, the problems that officers, prosecutors, judges, and others face in processing DWI offenders. The study examined the DWI enforcement process from on-road detection, through the arrest process, to court proceedings, and sanctioning. They also convened an expert panel of individuals with extensive experience in BAC law enforcement.

The good news is that BAC law enforcement is working quite well in some places and is functioning at an acceptable, if not optimal level, in most jurisdictions.

The study identified a total of 28 significant problems in enforcing BAC limit laws and traced these to their most common causes. These problems degrade the ability of the police to find DWI suspects, confirm suspects as DWI, and process suspects more quickly. The problems also diminish the ability of prosecutors both to charge and to

obtain DWI convictions, and the ability of judges to impose appropriate sanctions on persons convicted of DWI. Here is a sample of the 28 areas that could be improved.

Loopholes

Police officers doing other tasks

.... *The greatest improvement in BAC law enforcement in most jurisdictions will be realized by increasing the percentage of patrol officers' time spent looking for and interdicting DWI suspects.*

Defendants who don't show up at hearings

.... *The failure of defendants to appear (FTA) at adjudicative hearings can have a large negative impact on system performance. The extent of this problem nationwide is not known, but this research suggests that it could be widespread.*

Adjudication takes too long

.... *The time required to adjudicate DWI cases is excessive in many jurisdictions, often stretching out for months and, sometimes, for years. This dilutes a basic tenet of deterrence theory where swift and sure punishment deters future improper behaviors.*

Administrative Adjudication brings new problems

.... *A series of unexpected problems is occurring with administrative adjudication. These include excessive demands on police officers' time to appear at administrative hearings; procedures that require police officers to file a written request for continuance if they're unable to be at a hearing; laws that prohibit a prosecutor from appearing at a*



hearing (placing the police officer in the role of prosecutor); hearing officers who allow non pertinent issues to enter the discussions; and hearing officers who lack knowledge of the law, how alcohol impairment affects driving performance, techniques used to determine impairment, or some combination of these. These problems are causing police officers in some jurisdictions to avoid the process.

Judges need more information

.... Judges need more information about offender characteristics and sanctioning alternatives to develop effective sentencing packages.

Keep public support for BAC enforcement strong

.... Public support for BAC law enforcement is critical to keeping police officers looking for and arresting impaired drivers, prosecutors pressing charges, and judges imposing sanctions. Public support delivers the message that this is important work.

Processing lower BAC limits

.... Laws lowering the BAC limit to 0.08 have had little effect on enforcement and adjudication agencies. They use the same procedures as with other BAC levels. There may be some problems, however, in processing juveniles suspected of violating zero tolerance laws, particularly in transporting and holding these suspects.

Possible Solutions to these Loopholes

For each of the 28 areas that could be improved, there are recommendations that might help fix the loophole. Some types of recommendations are:

- Expand training programs for police officers, prosecutors, judges, and administrative hearing officers.
- Develop new or modified procedures to catch, process, adjudicate, and sanction DWI offenders.
- Use additional equipment, facilities, and personnel to help enforcement agencies.
- Use additional funding to support the operation of these agencies.
- Adopt new or modified laws on the conduct of criminal and administrative adjudication proceedings.
- Focus public information programs to gain support of the operation of DWI enforcement agencies.

NHTSA is conducting a follow-on project to implement some of the suggested improvements and to determine their effectiveness.

For a copy of ***Problems and Solutions in DWI Enforcement Systems***, write to the Office of Research and Traffic Records, NHTSA, NTS-31, 400 Seventh Street, S.W., Washington, DC, 20590, or send a fax to (202) 366-7096. Amy Berning was the contract manager for this project.

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